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May 10, 2013

VIA FAX

The Honorable Cathy Seibel
United States District Judge
The Hon. Charles L. Brieant Jr. Federal Building and U.S. Courthouse
300 Quarropas St.
White Plains, NY 10601-4150

**Re: *In re: Mirena IUD Products Liability Litigation*, 13-MD-2434 (CS)
Direct Filing of Cases in SDNY**

Dear Judge Seibel:

Pursuant to Order No. 1, Bayer HealthCare Pharmaceuticals Inc. submits its position on the direct filing in the Southern District of New York of related cases that emanate from other districts and that would properly be included in this MDL.

Bayer acknowledges that waiving its venue objections to direct filing in the MDL would promote judicial efficiency and eliminate delays. While Bayer wishes to cooperate, it also seeks to avoid future confusion over choice-of-law questions and ensure that it preserves its venue objections to cases that are not properly within this MDL.

As this Court's Order No. 1 recognizes, the Judicial Panel on Multidistrict Litigation's Transfer Order limited the scope of this MDL to cases "alleging migration or perforation injuries caused by [Mirena]." For this reason, Bayer proposes that the Court establish a procedure for the efficient transfer of cases that do not allege perforation or migration injuries out of MDL 2434 to the proper venue. The concern that cases outside the scope of the MDL will be filed is not theoretical as Bayer has already had to file oppositions to conditional MDL transfer orders of cases that do not allege perforation or migration.

In order to promote efficiency while preserving certain objections, Bayer proposes the following CMO language governing direct filing in MDL 2434. Much of this language is adapted from case-management orders successfully implemented in other MDLs. Bayer has shared its proposal with plaintiffs' counsel, who has informed Bayer that they are reviewing it but cannot commit to the provisions at this time.

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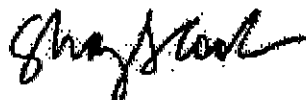
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Proposed CMO re: Direct Filing of Cases in MDL 2434

- A. In order to eliminate delays associated with transfer to this Court of cases filed or removed to other federal district courts, and to promote judicial efficiency, any plaintiff whose case would properly be subject to transfer to MDL 2434 may file her case directly in the MDL Proceedings in the Southern District of New York (such cases are referenced hereafter as "Direct-Filed Cases").
- B. Each case filed directly in the MDL Proceedings by a plaintiff who resides in a federal district other than the Southern District of New York will be filed in the MDL Proceedings for purposes of pretrial proceedings, consistent with the Judicial Panel on Multidistrict Litigation's April 8, 2013 Transfer Order ("Transfer Order").
- C. Defendant will not challenge the venue of any Direct-Filed Case for purposes of pretrial proceedings. Upon the completion of pretrial proceedings consistent with the Transfer Order, this Court, pursuant to 28 U.S.C. § 1404(a), shall transfer Direct-Filed Cases to the federal district court in the district where the plaintiff had her Mirena placed, subject to severance of multi-plaintiff actions if necessary. To facilitate this process, directly filed complaints shall specify the judicial district in which the plaintiff alleges her Mirena was placed. For purposes of choice-of-law analysis, the specified judicial district shall be treated as if it were a transferor court.
- D. Parts B and C do not preclude the parties from agreeing, at a future date, to try certain Direct-Filed Cases in this District.
- E. The inclusion of any action in MDL 2434, whether such action was or will be filed originally or directly in the Southern District of New York, shall not constitute a determination by this Court that jurisdiction or venue is proper in this District.
- F. The allowance for direct filing in MDL 2434 applies only to cases alleging injuries related to a Mirena that was placed in a patient within the United States.
- G. The allowance of direct filing in MDL 2434 does not extend to cases that do not include a good faith allegation of a migration or perforation injury caused by Mirena. Such cases shall be transferred to the proper venue pursuant to 28 U.S.C. § 1404(a) upon notice from Bayer after giving the plaintiff 14 days to demonstrate to the Court that the pleadings properly alleged injury relating to perforation or migration of Mirena.

Respectfully submitted,



Shayna S. Cook
Lead Counsel for Defendant
Bayer HealthCare Pharmaceuticals Inc.

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CC (via email):

Counsel for Plaintiffs Diogenes P. Kekatos, Fred Thompson, James R. Ronca, Matthew McCauley; and Counsel for Bayer Maric Woodbury, James Shepherd, William Harrington

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FACSIMILE TRANSMITTAL SHEET

**TO: THE HON. CATHY SEIBEL
U.S. DISTRICT JUDGE**

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TOTAL NO. OF PAGES, INCLUDING COVER: 4

**Re: *In re: Mirena IUD Products Liability Litigation*, 13-MD-2434 (CS)
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Dear Judge Seibel:

Pursuant to Order No. 1, enclosed please find Bayer's position letter on the direct filing in the Southern District of New York of related cases that emanate from other districts and that would properly be included in the above-named MDL.

Respectfully submitted,



Shayna S. Cook
Lead Counsel for Defendant
Bayer HealthCare Pharmaceuticals Inc.

Enclosures

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